



**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
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IN REPLY REFER TO:

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

**ISSUANCE OF LEASE BY DIRECT NEGOTIATION TOGETHER WITH A  
RIGHT-OF-ENTRY TO PACIFIC OCEAN PRODUCERS, LLC, MULTI-USER  
BUILDING LOT AND IMPROVEMENTS CONSISTING OF UNITS FV7A-H,  
DOMESTIC COMMERCIAL FISHING VILLAGE, PIER 38, HONOLULU  
HARBOR, OAHU**

**LEGAL**

**REFERENCE:** Sections 171-11, -35, -36 and -59 (b), Hawaii Revised Statutes.

**APPLICANT:** Pacific Ocean Producers, LLC, whose mailing address is 1133 North Nimitz Highway, Honolulu, Hawaii 96817

**LOCATION:** Multi-User Building Lot and Improvements consisting of Units FV7A-H, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu, Tax Map Key No: 1st/1-5-42:1 (Portion), as shown on the attached Exhibit "A".

**STATUS:** Governor's Executive Order Nos. 1346 to the Harbors Division, Department of Transportation.

**AREA:** 32,699 square feet, more or less -- Units FV7A-H  
68,562 square feet, more or less -- Multi-User Building Lot

**ZONING:** State Land Use Commission: Urban  
City and County of Honolulu: I-3 (Waterfront Industrial)

**LAND TITLE  
STATUS:**

Subsection 5(a) of the Hawaii Admission Act, non-ceded.

**CHARACTER  
OF USE:**

Construction, installation, operation, use, maintenance and repair of improvements necessary for the storage, processing, and wholesale distribution of seafood products and ancillary services and products, including, but not limited to, the operation of a seafood restaurant, and retail sales of seafood products and produce.

**TERM:**

Thirty-five (35) Years, the commencement date to be determined by the Director of Transportation.

**LEASE RENTAL:**

Subject to the waiver of lease rental as provided below, the annual base rental for the first twenty-five (25) years of the lease term, as determined by independent appraisal, shall be as follows:

Years 1 through 5	\$353,996.16
Years 6 through 10	\$407,095.58
Years 11 through 15	\$468,159.92
Years 16 through 20	\$538,383.91
Years 21 through 25	\$619,141.50
Years 26 through 30	\$93,915.01 plus Rental Renegotiation for Improvements consisting of Units FV7A-H
Years 31 through 35	\$108,002.27 plus Rental Renegotiation for Improvements consisting of Units FV7A-H

The annual rental for each year in the five (5) year periods for the first twenty-five (25) years of the lease is based on a 115% increase of the last year of the previous five (5)-year period. The annual rental for each year in the five (5) year periods for the remaining ten (10) years of the lease includes a base ground rental plus rental renegotiation of the improvements.

In addition to the above annual rentals, the applicant is required to pay common area maintenance fees as may be determined by the Association of Apartment Owners – Fishing Village. The rate for calendar year 2009 was estimated by the Association at fourteen cents (\$0.14) per square foot per month. The fees for calendar year 2010 have not been set by the Association as of this date.

**WAIVER OF  
LEASE RENTAL:**

The provisions of the lease require the lessee to make substantial improvements to the premises in an amount not less than \$1,000,000.00, including, without limitation, constructing and installing all interior utility lines to service the units, equipment and appurtenances necessary to meet the purposes of the lease. As a result, the lessee's obligation to pay rent to the State during the period of such construction shall be waived for a period not to exceed one year, or as of the date the lessee occupies the premises and commences operations, whichever occurs sooner.

**CHAPTER 343,  
ENVIRONMENTAL**

**ASSESSMENT:** The Harbors Division completed the Draft and Final Environmental Assessments for the Domestic Commercial Fishing Village Project and a Finding of No Significant Impact was issued for the project in June 1998. The subject lease falls under the aforementioned Environmental Assessments.

**REMARKS:** To enable the applicant to conduct preliminary work needed to obtain any necessary permits/approvals for the construction of leasehold improvements pending the execution of the lease, the issuance of a three (3) month right-of-entry is recommended.

The lease, by direct negotiation rather than by public auction, is appropriate in this instance in order to provide the applicant land wherein they would be able to continue the close association necessary for convenient and efficient processing of fresh fish. Concurrent to this objective is the desire to consolidate major commercial fishing activities in a modern and more efficient environment where the complete range of seafood processing can be accomplished.

The Domestic Commercial Fishing Village (DCFV) was declared a condominium property regime under Chapter 514A, Hawaii Revised Statutes, in 2006. The DCFV consists of 10 lots, including the Multi-User Building Lot. Prior to the DCFV being declared a condominium, the State constructed a Multi-User Building upon the subject lot consisting of eight (8) unfinished spaces. Under the condominium property regime, each space was declared a separate condominium Unit. The lot upon which the building was constructed upon and the foundations, columns, girders, beams, roof, floor slabs, support, floors and ceilings surrounding each Multi-User Building Unit along with pipes, wires, vents, shafts, ducts, conduits, air conditioning, party walls, interior load bearing walls or partitions, collectively referred to as the Multi-User Building Structural Elements were considered limited common elements with the State responsible to allocate, in its discretion, to one or more of the Units. The State was responsible for all costs and expenses relating to the maintenance, repair, replacement and restoration of the Multi-User Building Structural Elements and further responsible to allocate all such costs to each Unit proportionate to each Unit's appurtenant common interest. Under the Declaration, each Unit's appurtenant common interest in the Fishing Village condominium was determined by the Unit's relationship to the entire land area of the lot upon which the building resided, rather than the Unit's relationship on a square footage basis to the total square footage of the building. The unit's appurtenant common interest percentage as stated in the Declaration serves as the basis for the

Association of Apartment Owners - FISHING VILLAGE to assess common area maintenance fees payable to the Association.

The complicated structure which can be loosely described to a situation akin to a "condominium within a condominium" has presented difficulties to the State in leasing the individual Units. The downturn in the economy has not helped matters as many businesses have placed expansion plans on hold until the credit markets improve. As Pacific Ocean Producers expressed interest in leasing all eight (8) Units, discussions with the applicant evolved from the leasing of individual Units to a ground lease structure under which the entire lot and building could be leased. Under this structure, the applicant will assume all responsibilities for the repair, maintenance and replacement of the limited structural elements, thus relieving the State of these responsibilities and costs for the life of the lease. The rental will include two components, being ground rent excluding the building footprint as well as rent for each individual Unit. For the 26<sup>th</sup> through the 35<sup>th</sup> years of the lease, the ground rental rate component shall be increased based on a 115% increase of the last year of the previous five (5)-year period. The Unit rental rate component for the 26<sup>th</sup> through the 35<sup>th</sup> years of the lease shall be determined by Rental Renegotiation.

The lease for the Multi-User Building Lot and Improvements, consisting of Units FV7A-H, of the Domestic Commercial Fishing Village will be submitted to the Department of the Attorney General for review and approval as to form.

#### **RECOMMENDATION:**

That the Board:

1. Authorize the issuance of a right-of-entry to the applicant, together with its consultants, contractors and sub-contractors, to the proposed leasehold lot for the purposes of performing any site assessments and preliminary work needed to obtain all required permits for the leasehold improvements on the subject site. Said right-of-entry shall expire within three (3) months of its issuance or upon execution of the subject lease, whichever occurs sooner; and
2. Authorize issuance of a lease by direct negotiation to the applicant, subject to the terms and conditions outlined above and incorporated herein by reference and further subject to the following:

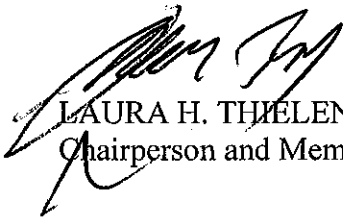
- A. Applicant shall be responsible and assume all costs for the repair, maintenance and replacement of structural elements of the Multi-User Building on the subject site.
- B. Such other terms and conditions as may be prescribed by the Director of the Department of Transportation to best serve the interests of the State.

Respectfully submitted,



BRENNON T. MORIOKA  
Director of Transportation

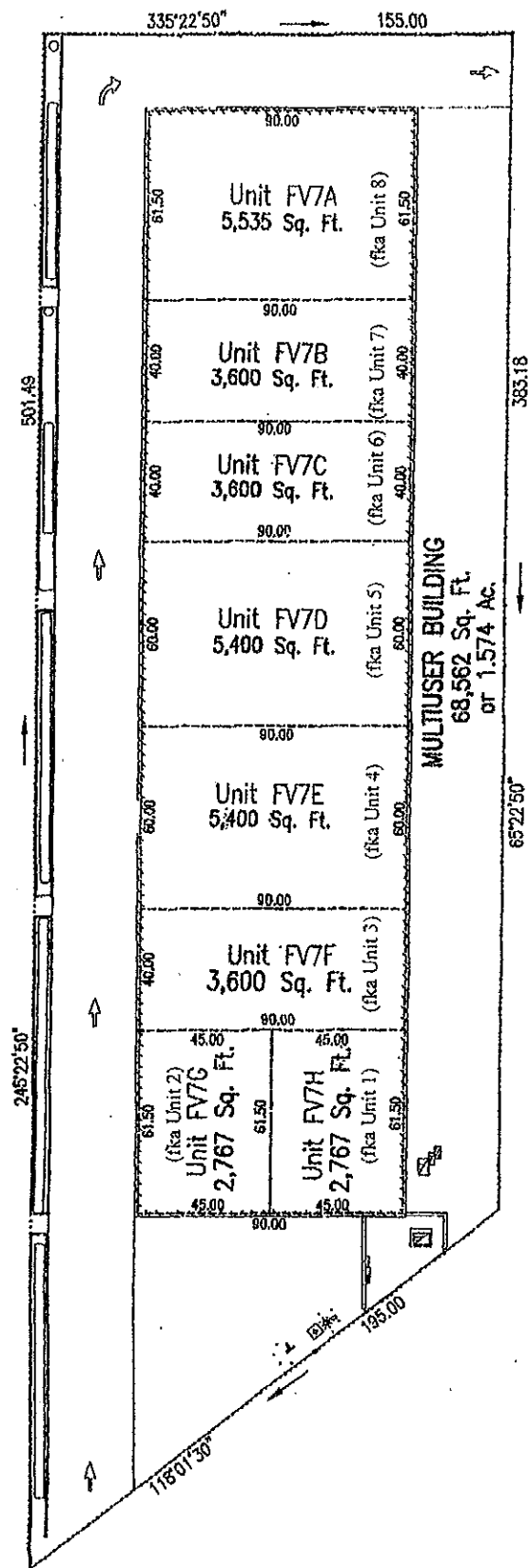
APPROVED FOR SUBMITTAL:



LAURA H. THIELEN  
Chairperson and Member

# Domestic Commercial Fishing Village Multi-User Building

as of April 2006



**EXHIBIT "A"**